

**KENTUCKY PERSONNEL BOARD**  
**MINUTES OF FEBRUARY 17, 2012**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on, February 17, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman  
Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
David F. Hutcheson, Jr., Member  
Susan Gardner, Member  
Tommy W. Chandler, Member  
Donald W. "Don" Blevins, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 13, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Dr. Stevens seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek reported that on February 10, 2012, he and Ms. Morris attended evaluation training. Mr. Sipek advised that the training was very informative and provided new information, i.e. the recent amendment of the evaluation forms.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

#### 4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report.

Ms. Bevington advised that 4,500 employees were enrolled in the Humana Vitality program. The formal kick-off for this program will commence on March 7, 2012, at the Transportation Cabinet in Frankfort. A statewide bus tour will also be taking place and employees are encouraged to attend when possible.

Ms. Bevington advised that the 2011 Annual Employee Performance Evaluations are completed. The Personnel Cabinet is performing an internal audit to ensure the evaluations were completed correctly and evaluation training will continue each month.

Ms. Bevington stated that the W-2's were successfully delivered by January 31, 2012. A few will need to be corrected, however, the Cabinet is pleased with the results.

At the request of Dr. Stevens, Ms. Bevington stated that she has gathered information concerning the resignation of employees who were off on extended sick leave, specifically, Workers Compensation, and the number of employees who were impacted. Ms. Bevington stated that although this was a complex task; she advised that in 2010, fifty-one employees were resigned after extended sick leave. Four out of fifty-one had filed a Workers Compensation claim. 2011 information will be provided when it becomes available.

Mr. Hutcheson asked about the Personnel Cabinet's audit. Ms. Bevington stated that the Cabinet had their annual financial audit by the Auditor of Public Accounts of both the old HR system and the new HR system for the fiscal year. The audit revealed some issues with employee pay, overtime, etc., however, all the issues have been remedied. The Personnel Cabinet is very pleased in going forward with the new system.

Ms. Gardner asked if the Cabinet had plans to train employees, not just the managers, in the new evaluation program. Ms. Bevington stated there is an on-line summary available for state employees and there has been discussion about including information in the employee handbook.

Upon conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

## 5. ORAL ARGUMENTS

### A. William Amburgey v. Dept. of Fish and Wildlife Resources and Jason Slone

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri; counsel for Appellee, the Hon. Misty Judy and Sgt. Jason Slone, Intervenor. After presenting oral arguments, the parties answered questions from the Board.

### B. Gina Graven v. Cabinet for Health and Family Services

Present for oral argument were Appellant, Gina Graven, and counsel for Appellee, the Hon. Carrie Cotton. After presenting oral arguments, the parties answered questions from the Board.

## 6. MOTIONS

### A. Motion for Advisory Opinion by Justice and Public Safety Cabinet, Department of Corrections (disciplinary action after arrest) (Jeremy Carmickle, Appeal No. 2010-220)

The Hon. Stafford Easterling, Justice and Public Safety Cabinet, was present to support his Motion for an Advisory Opinion. Mr. Easterling advised that the Appellant, Jeremy Carmickle, was arrested at a Corrections' facility on April 13, 2010. Appellant was placed on paid special leave pending federal felony charges of marriage fraud. On July 12, 2010, Appellant was taken off administrative leave and the Department of Corrections terminated his employment. In August 2010, the Appellant pled guilty to the federal felony offense of conspiracy to commit marriage fraud, which can carry a term of five years imprisonment. On September 3, 2010, Appellant filed an appeal with the Personnel Board alleging he was dismissed without just cause. Mr. Easterling advised that since Appellant has yet to be sentenced, the conviction is not yet final; therefore, the Appellant alleges he should not have been terminated.

Mr. Easterling stated that there is no state or federal law that establishes when a state agency can take disciplinary action during the pendency of a criminal case. Mr. Easterling asked the Board to issue an advisory opinion and provide guidance on this matter.

Chairman Sapp clarified Mr. Easterling's request before the Board. Mr. Crocker advised that Mr. Carmickle's appeal was on the Board's agenda for review today.

The Hon. Dinah Bevington came forward and advised that if the Board were to issue an opinion, the Personnel Cabinet would want to be involved. Ms. Bevington stated that the Cabinet was also approached about this situation. The Cabinet always advises agencies to separate administrative issues from criminal issues, because if a conviction is overturned it can place the agency in a difficult position.

Judge Chandler asked if the Board had jurisdiction to issue advisory opinions. Mr. Sipek stated that although agencies need guidance, he recommended that the Board deny the motion today as he would like a response from other agencies and the Personnel Cabinet. Further, Carmickle's appeal was on the agenda for adjudication, and once it is ruled on the Board loses jurisdiction.

Mr. Blevins asked why this matter was not addressed to the Attorney General's office. Mr. Easterling stated that the motion was brought to the Personnel Board because Carmickle had filed an appeal and the Board upholds merit law; but would consider taking the matter to the Attorney General's office. Mr. Easterling strongly believes the issue needs to be addressed. Mr. Sipek disagreed with the suggestion that the Attorney General's office should address this issue, because usually the employee will file an appeal with the Board.

Mr. Blevins moved to deny Appellee's Motion for Advisory Opinion at this time. Mr. Hutcheson seconded and the motion carried 7-0.

- B. Devenna Bales v. Cabinet for Health and Family Services and Personnel Cabinet
  - Motion to Intervene by Glenda Phillips
  - Response to Motion to Intervene by Appellant
  - Appellee's (CHFS) Motion in Support of Motion to Intervene

Present were counsel for Appellant, the Hon. Paul Fauri; counsel for Appellee Personnel Cabinet, the Hon. Dinah Bevington; and counsel for Ms. Glenda Phillips, the Hon. Tricia Shackelford. Mr. Crocker advised that counsel for Appellee Cabinet for Health and Family Services could not attend, but did file a written response.

Mr. Fauri stated that Ms. Phillips had the right and the opportunity to intervene and failed to do so until now.

Counsel for Ms. Phillips stated that allowing her client to intervene would not prejudice the appeal. Further, her client did not fully understand what rights she was waiving when she chose not to intervene

Chairman Sapp asked Ms. Phillips if she understood her right to intervene. Ms. Phillips stated that she did not. Ms. Phillips stated when she received the Cabinet's notice, she contacted about ten attorneys and was told the appeal was not directed toward her and she should not intervene. Ms. Phillips stated that she has held her position for a year and has received an outstanding evaluation, and now the Hearing Officer has voided her appointment. She stated that it is not fair to her. Chairman Sapp asked Ms. Phillips whether she was aware of the consequences if the Appellant prevailed on her appeal. Ms. Shackleford stated that Ms. Phillips received conflicting information from different attorneys and did not understand the consequences.

Mr. Hutcheson moved to deny Ms. Phillips' Motion to Intervene. Judge Chandler seconded and the motion carried 7-0.

## **7. INVESTIGATIONS**

### **Anonymous Request for Investigation of Department of Agriculture (Deferred from January)**

--Response from Auditor of Public Accounts

Mr. Sipek stated that the Board received an e-mail from Brian Lykins, Auditor's office, indicating that if the hiring of Jennifer Ledford is included in their examination, they will advise the Board. Mr. Sipek stated no action is needed from the Board at this time.

## **8. CLOSED SESSION**

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Gardner seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (11:12 a.m.)

Ms. Gardner moved to return to open session. Mr. Hutcheson seconded and the motion carried 7-0. (12:25 p.m.)

9. **CASES TO BE DECIDED**

**The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.**

A. William Amburgey v. Dept. of Fish and Wildlife Resources and Jason Slone

Mr. Blevins moved to note Appellant's exceptions, Appellee's response, and oral argument and to defer this matter to the next meeting of the Board. Ms. Gardner seconded and the motion carried 7-0.

B. Gina Graven v. Cabinet for Health and Family Services (

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response, and oral argument and to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

C. Jennifer Click v. Energy and Environment Cabinet  
**(Deferred from January meeting)**

Mr. Gillis moved to note Appellee's exceptions, Appellant's response and oral argument, and to accept the Final Order Altering the recommended order and dismissing the appeal, as attached to the minutes. Mr. Hutcheson seconded and the motion carried 5-2, with Ms. Gardner and Dr. Stevens opposing.

D. William Jones v. Public Protection Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

E. Koppy Rhodes v. Cabinet for Health and Family Services

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

F. Jerry Williams v. Justice and Public Safety Cabinet (Juvenile Justice)

Dr. Stevens moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

G. Kyle Willis v. Justice and Public Safety Cabinet (Corrections)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

H. Patricia Wooley v. Cabinet or Health and Family Services

Mr. Blevins moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- I. Johnny Brockman v. Justice and Public Safety Cabinet (Corrections)
- J. Stephen Bergeron v. Justice and Public Safety Cabinet (Corrections)
- K. Brandi Brown v. Education and Workforce Development Cabinet
- L. Jeremy Carmickle v. Justice and Public Safety Cabinet (Corrections)
- M. Nicole Coffey v. Cabinet for Health and Family Services
- N. James Deaton v. Transportation Cabinet
- O. Terrance Gibbs v. Cabinet for Health and Family Services

Mr. Hutcheson moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Mr. Gillis seconded and the motion carried 7-0.

## 10. WITHDRAWALS

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Gardner seconded and the motion carried 7-0.

- A. Joe Doom v. Justice and Public Safety Cabinet (Corrections)
- B. Paula Hess v. Cabinet for Health and Family Services
- C. Isaiah C. James, IV v. Cabinet for Health and Family Services
- D. Bradley Lowe v. Tourism, Arts & Heritage Cabinet (Fish & Wildlife)  
(2 appeals)
- E. Debora Pigman v. Cabinet for Health and Family Services
- F. Michael O'Leary v. Cabinet for Health and Family Services
- G. Bradley Nethery v. Cabinet for Health and Family Services

## 11. SETTLEMENTS

- A. Timothy Anderson v. Transportation Cabinet (2011-025)  
**--Deferred from January Board**
- B. Elizabeth Coleman v. Cabinet for Health and Family Services
- C. Jeffrey Nelson v. Kentucky Higher Education Assistance Authority

Judge Chandler moved to defer settlement A and to accept settlements B and C *en bloc*. Mr. Blevins seconded and the motion carried 7-0.

## 12. OTHER

Before the meeting adjourned, the members were reminded that the next Board meeting was scheduled for Friday, March 9, 2012.

There being no further business, Dr. Stevens moved to adjourn. Mr. Hutcheson seconded and the motion carried 7-0. (12:30 p.m.)

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Wayne D. Sapp, Chairman

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Larry B. Gillis, Vice Chairman



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David B. Stevens, Member

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David F. Hutcheson, Jr., Member

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Susan Gardner, Member

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Tommy Chandler, Member

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Donald W. Blevins, Member